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9 **BEFORE THE**
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. **2012-33**

12 **DARUSH B. SAMIA, AKA**
13 **DARUSH BEHZAD SAMIA**
6517 Vista Del Mar
14 Playa Del Rey, CA 90293
15 Registered Nurse License No. 489520.

A C C U S A T I O N

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
21 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
22 Consumer Affairs.

23 2. On or about March 31, 1993, the Board of Registered Nursing issued Registered
24 Nurse License Number 489520 to Darush B. Samia aka Darush Behzad Samia (Respondent).
25 The Registered Nurse License was in full force and effect at all times relevant to the charges
26 brought herein and will expire on June 30, 2012, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2750 of the Business and Professions Code provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811, subdivision (b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

STATUTORY PROVISION

6. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

...

(b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

7. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

8. Section 493 of the Code states in pertinent part:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary

1 action against a person who holds a license, upon the ground that the
2 applicant or the licensee has been convicted of a crime substantially related
3 to the qualifications, functions, and duties of the licensee in question, the
4 record of conviction of the crime shall be conclusive evidence of the fact
5 that the conviction occurred, but only of that fact, and the board may inquire
6 into the circumstances surrounding the commission of the crime in order to
7 fix the degree of discipline or to determine if the conviction is substantially
8 related to the qualifications, functions, and duties of the licensee in question.

9 As used in this section, 'license' includes 'certificate,' 'permit,'
10 'authority,' and 'registration.'

11 9. Section 2761 of the Code states:

12 The board may take disciplinary action against a certified or licensed
13 nurse or deny an application for a certificate or license for any of the
14 following:

15 ...

16 (a) Unprofessional conduct, which includes, but is not limited to, the
17 following:

18 ...)

19 (f) Conviction of a felony or of any offense substantially related to the
20 qualifications, functions, and duties of a registered nurse, in which event the
21 record of the conviction shall be conclusive evidence thereof.

22 ...

23 10. Section 2762 of the Code states:

24 In addition to other acts constituting unprofessional conduct within the
25 meaning of this chapter [the Nursing Practice Act], it is unprofessional
26 conduct for a person licensed under this chapter to do any of the following:

27

28 (b) Use any controlled substance as defined in Division 10
(commencing with Section 11000) of the Health and Safety Code, or any
dangerous drug or dangerous device as defined in Section 4022, or alcoholic
beverages, to an extent or in a manner dangerous or injurious to himself or
herself, any other person, or the public or to the extent that such use impairs
his or her ability to conduct with safety to the public the practice authorized
by his or her license.

(c) Be convicted of a criminal offense involving the prescription,
consumption, or self-administration of any of the substances described in
subdivisions (a) and (b) of this section, or the possession of, or falsification
of a record pertaining to, the substances described in subdivision (a) of this
section, in which event the record of the conviction is conclusive evidence
thereof.

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3 **REGULATORY PROVISIONS**

4 11. California Code of Regulations, title 16, section 1444, states:

5 A conviction or act shall be considered to be substantially related to
6 the qualifications, functions or duties of a registered nurse if to a substantial
7 degree it evidences the present or potential unfitness of a registered nurse to
8 practice in a manner consistent with the public health, safety, or welfare.
9 Such convictions or acts shall include but not be limited to the following:

10 (a) Assaultive or abusive conduct including, but not limited to, those
11 violations listed in subdivision (d) of Penal Code Section 11160.

12 (b) Failure to comply with any mandatory reporting requirements.

13 (c) Theft, dishonesty, fraud, or deceit.

14 (d) Any conviction or act subject to an order of registration pursuant to
15 Section 290 of the Penal Code.

16 12. California Code of Regulations, title 16, section 1445 states in pertinent part:

17 ...

18 (b) When considering the suspension or revocation of a license on the
19 grounds that a registered nurse has been convicted of a crime, the board, in
20 evaluating the rehabilitation of such person and his/her eligibility for a
21 license will consider the following criteria:

22 (1) Nature and severity of the act(s) or offense(s).

23 (2) Total criminal record.

24 (3) The time that has elapsed since commission of the act(s) or
25 offense(s).

26 (4) Whether the licensee has complied with any terms of parole,
27 probation, restitution or any other sanctions lawfully imposed against the
28 licensee.

 (5) If applicable, evidence of expungement proceedings pursuant to
 Section 1203.4 of the Penal Code.

 (6) Evidence, if any, of rehabilitation submitted by the licensee.

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1 COSTS

2 13. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
3 administrative law judge to direct a licensee found to have committed a violation or violations of
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
5 enforcement of the case.

6 **FIRST CAUSE FOR DISCIPLINE**

7 **(February 19, 2009 Conviction for Driving Under the Influence on October 18, 2008)**

8 14. Respondent is subject to disciplinary action under sections 490 and 2761, subdivision
9 (f), of the Code in that Respondent was convicted of a crime substantially related to the
10 qualifications, functions, and duties of a registered nurse. The circumstances are as follows:

11 a. On or about February 19, 2009, in a criminal proceeding entitled *The People of*
12 *the State of California v. Darush B. Samia*, in Orange County Superior Court, case number
13 CN254069, Respondent was convicted on his plea of guilty, for violating Vehicle Code section
14 23152 subdivision (b), driving with a blood alcohol concentration (BAC) of 0.08% or more, a
15 misdemeanor. Respondent also admitted to a violation of Penal Code section 23578, driving with
16 a blood alcohol level greater than 0.15% by weight.

17 b. As a result of his conviction Respondent, was sentenced to five years probation,
18 ordered to pay \$2,135 in fines, ordered to complete 10 days of community service, enroll in a first
19 time DUI offender and attend a Mothers Against Drunk Driving program.

20 c. The facts that led to the conviction are that on or about October 18, 2008, at
21 approximately 11:30 p.m. an Oceanside Police Officer witnessed Respondent's white Ford
22 Explorer driving erratically on Mission Avenue in Oceanside California. Respondent's vehicle
23 was driving at night with its headlights off. Respondent attempted to stop at the crosswalk limit
24 line of an intersection but instead stopped in the intersection. Respondent then executed a U-turn
25 and drove east bound on Mission Avenue. Respondent failed to maintain his vehicle in a single
26 lane and swerved over the center dividing line into the oncoming traffic lane. Respondent's was
27 pulled over by Oceanside Police due to his erratic driving. Upon contacting Respondent the
28 officer noticed that Respondent's breath smelled of alcohol, his eyes were watery and glassy, and

1 that Respondent's speech was slurred. Respondent admitted to having three black and tan beers
2 before driving and told the officer, "I had too much to drink." Upon exiting his car respondent
3 had to hold on to, or lean on his vehicle to prevent himself from falling. Respondent refused to
4 conduct any field sobriety tests and told the officer, "You know I'm drunk." Upon his being
5 arrested Respondent became angry with officers and repeatedly threatened them stating, "wait
6 until you're on my operating room table." Respondent was found to have a blood alcohol level of
7 .32% by weight, four times the legal limit.

8 SECOND CAUSE FOR DISCIPLINE

9 **(February 9, 2011 Criminal Conviction Driving Under the Influence on October 22, 2010)**

10 15. Respondent is subject to disciplinary action under sections 490 and 2761, subdivision
11 (f), of the Code in that Respondent was convicted of a crime substantially related to the
12 qualifications, functions, and duties of a registered nurse. The circumstances are as follows:

13 a. On or about February 9, 2011, in a criminal proceeding entitled *The People of*
14 *the State of California v. Darush B. Samia*, in Orange County Superior Court, case number
15 10SM04914, Respondent was convicted on his plea of guilty, for violating Vehicle Code section
16 23152 subdivision (a) driving under the influence and subdivision (b), driving with a blood
17 alcohol concentration (BAC) of 0.08% or more, a misdemeanor.

18 b. As a result of his convictions Respondent, was sentenced to four days in jail,
19 ordered to complete an 18 month multiple DUI offender program, pay \$1232 in fines, ordered to
20 complete 30 days of work for Cal Trans or face 60 days in jail and attend a Mothers Against
21 Drunk Driving Impact Panel.

22 c. The facts that led to the conviction are that on or about October 22, 2010, at
23 approximately 7:30 a.m., Respondent's vehicle was witnessed by an Orange County Sheriff's
24 Department Deputy for failing to make a complete stop at a stop sign, and failing to signal a left
25 turn on San Luis Rey Blvd. Respondent was immediately pulled over by the Sheriff's
26 Department for the failure to make a complete stop and failure to signal a turn. Upon contacting
27 Respondent the deputy noticed, a strong odor of alcoholic beverage coming from inside
28 Respondent's vehicle. Respondent admitted to having a beer just before driving. Respondent

1 was twice administered a Preliminary Alcohol Screen (PAS) test which showed a BAC of .102
2 and .09 respectively. Respondent was arrested for DUI and a chemical test later showed him to
3 have a BAC of .09, which led to his DUI conviction.

4 **FOURTH CAUSE FOR DISCIPLINE**

5 **(Unprofessional Conduct – Use of Alcohol in a Dangerous Manner)**

6 16. Respondent is subject to disciplinary action to under section 2762 (b) of the Code in
7 that on October 18, 2008 and again on October 22, 2010, as described in paragraphs 14 and 15
8 above, Respondent used alcoholic beverages to an extent or in a manner that was potentially
9 dangerous and injurious to himself and to others in that with a BAC three times the legal limit, he
10 operated a motor vehicle.

11 **THIRD CAUSE FOR DISCIPLINE**

12 **(Unprofessional Conduct - Conviction of Alcohol-Related Criminal Offenses)**

13 17. Respondent has subjected his registered nurse license to disciplinary action under
14 section 2762, subdivision (c) of the Code, for unprofessional conduct, in that on or about
15 February 19, 2009 and again on February 9, 2011, as described in paragraphs 14 and 15 above,
16 Respondent was convicted of a criminal offense involving the consumption and/or self-
17 administration of alcohol.

18 **PRAYER**

19 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
20 and that following the hearing, the Board of Registered Nursing issue a decision:

21 1. Revoking or suspending Registered Nurse License Number 489520, issued to Darush
22 B. Samia aka Darush Behzad Samia;

23 2. Ordering Darush B. Samia aka Darush Behzad Samia to pay the Board of Registered
24 Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to
25 Business and Professions Code section 125.3;

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3. Taking such other and further action as deemed necessary and proper.

DATED: July 18, 2011

Louise R. Bailey
LOUISE R. BAILEY, M.ED., RN
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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